Federal Express Brokerage Sdn Bhd & Ors v Malaysia Airports (Sepang) Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO R1–22–02 OF 2008
AZIAH ALI J
18 OCTOBER 2010

Administrative Law — Remedies — Declarations — Decision of Minister of Finance to impose free commercial zone charges at KLIA free commercial zone ('FCZ') — Whether imposition of FCZ charges ultra vires the Free Zones Act 1990 and the Free Zones Regulations 1991 — Whether first defendant empowered to impose FCZ charges before commencement of reg 8A of the Regulations 1991 — Free Zones Act 1990 ss 2, 3(1) & (2) — Free Zones Regulations 1991 reg 8A

Although this action was commenced by five plaintiffs, by the time the trial commenced only the first, third and fifth plaintiffs ('the plaintiffs') remained. The plaintiffs, members of the Air Freight Forwarders Association of Malaysia ('the AFAM'), were at all material times carrying out activities in the Kuala Lumpur International Airport ('KLIA') Free Commercial Zone ('FCZ'). The first defendant was at all material times the authority appointed by the Minister of Finance ('the Minister'), under s 2 of the Free Zones Act 1990 ('the Act'), to administer, maintain and operate the KLIA free zone area, while the second defendant was a company wholly owned by Malaysia Airport Holdings Bhd. The Minister directed the first defendant to impose free zone charges on the plaintiffs. These charges encompassed services such as processing FCZ forms, licenses, staff passes and the provision of overall security of the free zone. However, the plaintiffs refused to pay the FCZ charges and claimed that the demands for payment of the FCZ charges by the Minister and the defendants were unlawful. The Finance Ministry sought AFAM's assistance to request its members to pay arrears of FCZ charges amounting to RM24,092,834 as at 14 May 2007 to the first defendant so as to enable the first defendant to continue administering the FCZ services at KLIA. The plaintiffs commenced an action against the defendants. It was the plaintiffs' case that the Minister's authority to direct the first defendant to impose a free zone charge only came into force on 20 April 2007 when the new reg 8A was introduced into the Free Zones Regulations 1991 ('the Regulations'). As such, the plaintiffs contended that prior to 20 April 2007 there was no provision either in the Act or the Regulations that gave the first defendant the power to impose any FCZ charges. Thus the plaintiffs submitted that they were not liable to pay FCZ charges prior to 20 April 2007 and that the FCZ charges so levied against them were unauthorised or illegal. By way of this action the plaintiffs sought many declarations, including the declaration that the defendants had no authority to

collect any monies with regards to the FCZ charges, damages and costs. The first defendant submitted that the Minister's direction on the imposition of the FCZ charges had been in place before the commencement of reg 8A of the Regulations. The first defendant also submitted that the plaintiffs had derived a benefit from the services provided by the first defendant in the KLIA FCZ and thus could not now refuse to pay for those services on the grounds that the direction of the Minister to impose the FCZ charges was unlawful. The first defendant thus counterclaimed against the plaintiffs for the services it had provided to them at the KLIA FCZ, which it had never intended to provide free of charge or gratuitously. The main issue for determination in this case was whether the first defendant was empowered to impose FCZ charges before the commencement of reg 8A of the Regulations.

Held, dismissing the claim with costs to be taxed unless agreed and allowing the first defendant's counterclaim with costs to be taxed:

(1) The Act was a specific legislation enacted to provide for and regulate the free zone areas. Thus any right of the plaintiffs to operate in the free zone had to be subject to the Act. It was found that under the provisions of the Act the Minister was allowed to impose such conditions as he deemed fit in relation to the plaintiffs' activities in the KLIA FCZ, which included the imposition of the FCZ charges. Therefore, the Minister had power to impose FCZ charges even prior to 27 April 2007 and based on the evidence adduced the rates imposed were reasonable (see paras 18, 21–22).

(2) It was not disputed that the Minister had appointed the first defendant as the authority to operate the KLIA FCZ and that the first defendant had provided services to the plaintiffs at the FCZ. The plaintiffs had therefore received benefits from the first defendant. In addition, the first defendant had also never represented that these services were provided gratuitously. The first defendant as the authority appointed by the Minister was obliged under the Act to comply with the directions given by the Minster in relation to the FCZ charges. As such the charges imposed on the plaintiffs prior to 27 April 2007 were not illegal and the first defendant was entitled to impose and to collect such FCZ charges from the plaintiffs. Hence the sums that remained outstanding were due and payable by the plaintiffs to the first defendant (see paras 20–21 & 23).

[Bahasa Malaysia summary

Walaupun tindakan ini telah dimulakan oleh lima plaintif, semasa perbicaraan dimulakan hanya tinggal plaintif-plaintif pertama, ketiga dan kelima ('plaintif-plaintif') yang kekal. Plaintif-plaintif, ahli-ahli Persatuan Pengangkutan Penghantaran Udara Malaysia ('PPPUM'), adalah pada setiap masa matan menjalankan aktiviti di Zon Bebas Perdagangan ('ZBP') Lapangan Terbang Antarabangsa Kuala Lumpur ('LTAKL'). Defendan pertama pada

setiap masa matan adalah pihak berkuasa yang dilantik oleh Menteri Kewangan ('Menteri'), di bawah s 2 Akta Zon-Zon Bebas 1990 ('Akta'), untuk mentadbir, menyelenggara dan menjalankan operasi kawasan zon bebas LTAKL, manakala defendan kedua adalah syarikat milik penuh Malaysia Airport Holdings Bhd. Menteri telah mengarahkan defendan pertama mengenakan caj-caj zon bebas ke atas plaintif-plaintif. Caj-caj tersebut merangkumi perkhidmatan-perkhidmatan seperti pemprosesan borang-borang, lesen-lesen, pas-pas pekerja ZBP dan peruntukan keseluruhan keselamatan zon bebas itu. Walau bagaimanapun, plaintif-plaintif enggan membayar caj-caj ZBP itu dan mendakwa bahawa tuntutan-tuntutan untuk bayaran caj-caj ZBP oleh Menteri dan defendan-defendan menyalahi undang-undang. Menteri Kewangan memohon bantuan PPPUM untuk meminta ahli-ahlinya membayar tunggakan caj-caj ZBP berjumlah RM24,092,834 setakat 14 Mei 2007 kepada defendan pertama bagi membolehkan defendan pertama terus mentadbir perkhidmatan ZBP di LTAKL. Plaintif-plaintif telah memulakan tindakan terhadap defendan-defendan. Adalah kes plaintif-plaintif bahawa kuasa Menteri untuk mengarahkan defendan pertama mengenakan caj zon bebas hanya mula berkuat kuasa pada 20 April 2007 apabila peraturan baru 8A diperkenalkan ke dalam Peraturan Zon-Zon Bebas 1991 ('Peraturan'). Oleh itu, plaintif-plaintif berhujah bahawa sebelum 20 April 2007 tiada peruntukan sama ada dalam Akta atau Peraturan yang memberikan defendan pertama kuasa untuk mengenakan caj-caj ZBP. Dengan itu plaintif-plaintif berhujah bahawa mereka tidak bertanggungjawab untuk membayar caj-caj ZBP sebelum 20 April 2007 dan bahawa caj-caj ZBP yang dilevikan terhadap mereka adalah tanpa kebenaran atau salah di sisi undang-undang. Melalui tindakan ini plaintif-plaintif memohon pelbagai deklarasi, termasuklah deklarasi bahawa defendan-defendan tiada kuasa untuk mengutip apa-apa wang berkaitan caj-caj ZBP, ganti rugi dan kos. Defendan pertama berhujah bahawa arahan Menteri berhubung pengenaan caj-caj ZBP telah wujud sebelum adanya peraturan–peraturan 8A Peraturan. Defendan pertama juga berhujah bahawa plaintif-plaintif telah mendapat faedah daripada perkhidmatan yang diberikan oleh defendan pertama di ZBP LTAKL dan oleh itu plaintif-plaintif tidak boleh enggan membayar untuk perkhidmatan tersebut atas alasan bahawa arahan Menteri untuk mengenakan caj-caj ZBP itu menyalahi undang-undang. Defendan pertama dengan itu telah menuntut balas terhadap plaintif-plaintif untuk perkhidmatan yang diberikan kepada mereka di ZBP LTAKL, yang mana ia tidak berniat memberikan caj percuma. Isu utama untuk ditentukan dalam kes ini adalah sama ada defendan pertama mempunyai kuasa untuk mengenakan caj-caj ZBP sebelum peraturan 8A Peraturan berkuat kuasa.

Diputuskan, menolak tuntutan dengan kos untuk dikenakan cukai kecuali dipersetujui dan membenarkan tuntutan balas defendan pertama dengan kos untuk dikenakan cukai:

(1) Akta tersebut merupakan perundangan spesifik yang digubal untuk

memperuntukkan dan mengawal kawasan-kawasan zon bebas. Oleh itu apa-apa hak plaintif-plaintif untuk menjalankan operasi di zon bebas itu tertakluk kepada Akta tersebut. Adalah didapati bahawa di bawah peruntukan Akta tersebut Menteri dibenarkan mengenakan syarat-syarat tertentu sepertimana difikirkan sesuai berkaitan aktiviti-aktiviti plaintif-plaintif di ZBP LTAKL, yang termasuklah pengenaan caj-caj ZBP. Oleh itu, Menteri mempunyai kuasa untuk mengenakan caj-caj ZBP sebelum 27 April 2007 lagi dan berdasarkan keterangan yang dikemukakan kadar-kadar yang dikenakan adalah munasabah (lihat perenggan 18 & 21–22).

(2) Tidak dipertikaikan bahawa Menteri telah melantik defendan pertama sebagai pihak berkuasa untuk menjalankan operasi ZBP LTAKL dan bahawa defendan pertama telah memberikan perkhidmatan kepada plaintif-plaintif di ZBP. Plaintif-plaintif dengan itu telah menerima faedah daripada defendan pertama. Tambahan, defendan pertama juga tidak pernah mengatakan bahawa perkhidmatan-perkhidmatan tersebut diberikan secara percuma. Defendan pertama sebagai pihak berkuasa yang dilantik oleh Menteri bertanggungjawab di bawah Akta untuk mematuhi arahan-arahan yang diberikan oleh Menteri berkaitan caj-caj ZBP tersebut. Oleh itu caj-caj yang dikenakan ke atas plaintif-plaintif sebelum 27 April 2007 tidak menyalahi undang-undang dan defendan pertama berhak untuk mengenakan dan mengutip caj-caj ZBP tersebut daripada plaintif-plaintif. Justeru itu jumlah baki tersebut masih kena dibayar dan perlu dibayar kepada defendan pertama (lihat perenggan 20–21 & 23).]

Notes

For cases on declaration, see 1(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 613–695.

Legislation referred to

Companies Act 1950
Contracts Act 1950 s 71
Free Zones Act 1990 ss 2, 3(1), 3(2), 10, 10(1), (3), 13, 13(2), 47, First Schedule, Second Schedule,
Free Zones Regulations 1991 reg 8A

V Jeevaretnam (J Shamesh with him) (Jeevaretnam & Co) for the plaintiffs.
Jasmeetpal Singh (Siew & Jasmeet) for the defendants.

Aziah Ali J:

[1] This action was initially commenced by five plaintiffs. By the time trial commenced, only the first, third and fifth plaintiffs remained. On the day of

hearing the second plaintiff withdrew its claim against the defendants and consent judgment on the first defendant's counterclaim was recorded.

[2] The fourth plaintiff had earlier discontinued its action against the defendants (encl 79A). Counsel for the defendants informed the court that the first defendant's counterclaim is still pending against the fourth plaintiff. However no representative for the fourth plaintiff was present. Counsel for the defendants prayed for judgment in default to be entered against the fourth plaintiff in respect of the counterclaim. The solicitors acting for the first, third and fifth plaintiffs are on record as solicitors for the fourth plaintiff but said that they were no longer the fourth plaintiff's solicitors. However no notice of withdrawal or change of solicitors had been filed. In view of the absence of the fourth plaintiff and no submissions made in respect of the defendant counsel's application, judgment in default was entered in respect of the first defendant's counterclaim against the fourth plaintiff with costs to be taxed. Hence in this judgment any reference to the plaintiffs will be a reference to the first, third and fifth plaintiffs only.

BACKGROUND

[3] The first, third and fifth plaintiffs are companies registered in Malaysia pursuant to the Companies Act 1965. The first and third plaintiffs became members of the Air Freight Forwarders Association of Malaysia ('AFAM') since 1994. The fifth plaintiff became a member since 2001. The first and second defendants are companies registered under the Companies Act 1965. The second defendant is wholly owned by Malaysia Airports Holdings Bhd.

[4] Section 3(2) of the Free Zones Act 1990 ('the Act') empowers the Minister of Finance to appoint an 'Authority' to administer, maintain and operate any free zone so declared under s 3(1). The first defendant avers that on 19 August 1997 it was appointed as the 'Authority' to administer, maintain and operate the free zone at the Kuala Lumpur International Airport Cargo Village ('the KLIA FCZ').

[5] In 2007 the Free Zones Regulations 1991 ('the 1991 Regulations') was amended vide the Free Zones (Amendment) Regulations 2007 (PU(A)166/2007) which came into force on 20 April 2007. A new reg 8A was introduced which reads as follows:

> Authority may impose free zone charge.
>
> 8A
>
> (1) Where the Minister so directs, a free zone charge shall be payable by any person or his agent to the Authority in respect of every approved declaration made under regulations 5, 21, 22, 23, 24, 25, 26, 27 and 28.

(2) Any free zone charge which is not paid within such period as may be prescribed by the Authority, or in arrears shall be treated as a civil debt owed by the person or his agent to the Authority and the Authority may avail itself of such means under the law for the recovery of such debt.

[6] On 18 May 2007 the Ministry of Finance through Datuk Aziyah Bahauddin, the Secretary of the Tax Analysis Division issued a letter to the Chairman of AFAM notifying him that the Minister of Finance had decided to maintain the charge for FCZ at the KLIA at RM5 per declaration using the specified customs declaration form. The Finance Ministry sought AFAM's assistance to request its members to pay arrears of FCZ charges amounting to RM24,092,834 outstanding as at 14 May 2007 to the authority to enable the authority to continue administering the FCZ area at KLIA. The Finance Ministry also sent letters dated 14 December 2007 to the second, third and fourth plaintiffs requesting them to settle the outstanding FCZ charges (exh D22).

[7] The plaintiffs contend that prior to 20 April 2007 there was no provision under the Act giving power to the first defendant to impose any levy/charges and any charge levied was unauthorised or illegal. Therefore they were not liable to pay FCZ charges prior to 20 April 2007.

[8] By way of this action the plaintiffs prayed for the reliefs as per para 33 of the statement of claim as follows:

(a) A declaration that the letter issued by the Ministry of Finance dated 18.5.2007 and 14.12.2007 are void ab initio and/or contrary to the provisions of the law;

(b) An order for the defendants to produce accounts of the money collected from the plaintiff as free zone charges from year 2000 onwards;

(c) A declaration for the first defendant to return all monies collected from the plaintiffs from year 2000 immediately;

(d) A declaration that the defendants have no authority to collect any monies with regards to the Free Zone Charges;

(g) That the defendants by itself, their servants, agents or otherwise permit the plaintiffs to enter and operate in the Kuala Lumpur International Airport Free Commercial Zone;

(i) general damages;

(j) aggravated damages;

(k) exemplary damages;

(l) post judgment interest at the rate of 8% per annum on the sum of damages awarded from the date of judgment until full and final settlement of the claim;

(m) costs;

(n) such further and other relief as this Honourable Court deems fit and proper to grant. A

The plaintiffs withdrew the reliefs prayed for in sub-paras 33(e), (f) and (h).

[9] The defendants contend that the plaintiffs' refusal to pay the FCZ charges is baseless and unlawful and the demand for payment of the FCZ charges made by the Ministry of Finance and the defendants are lawful. Alternatively the first defendant states that the sums of monies owed are reasonable which the first defendant is entitled to claim by way of quantum meruit and/or pursuant to s 71 of the Contracts Act 1950 on the following grounds: B C

(a) there was an implied promise on the part of the plaintiffs to pay the first defendant for the said services;

(b) the said services were provided by the first defendant at the request of the plaintiffs and the plaintiffs had obtained and had accepted the benefit of the said services; and/or D

(c) the first defendant never intended to provide the said services to the plaintiffs free of charge or gratuitously.

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[10] The first defendants avers that as at 7 April 2008 the plaintiffs are justly and truly indebted to the first defendant. Therefore as against the first, third and fifth plaintiffs the first defendant counterclaims as follows:

The first plaintiff … RM5,529,185
The third plaintiff … RM2,963,640
The fifth plaintiff … RM 214,835.50 F

with interest thereon at the rate of 8%pa from 7 April 2008 to the date of full settlement and costs of the counterclaim.

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[11] The parties agreed to the following facts (encl 82):

(a) Menteri Kewangan telah melantik defendan pertama sebagai pihak berkuasa bagi kawasan zon bebas komersial KLIA menurut Akta Zon Bebas 1990; dan

(b) semenjak penubuhan Zon Bebas Komersial KLIA, plaintif-plaintif telah sehingga kini masih menggunakan dan beroperasi melalui zon bebas komersial KLIA. H

[12] The issues for determination agreed upon by both parties are as follows (encl 81): I

(a) sama ada defendan pertama dan kedua berhak untuk mengenakan dan mengutip caj zon bebas komersial pada kadar RM5 bagi setiap deklarasi oleh plaintif-plaintif;

(b) secara alternatifnya, sama ada caj zon bebas komersial pada kadar RM5 setiap deklarasi adalah jumlah yang munasabah yang mana defendan pertama berhak untuk menuntut daripada daripada plaintif-plaintif secara *quantum meruit* dan/atau menurut s 71 Akta Kontrak 1950 untuk penggunaan zon bebas komersial KLIA;

(c) sama ada Dato' Aziyah Bahauddin selaku Ketua Setiausaha Perbendaharaan mempunyai kuasa untuk mengarahkan plaintif-plaintif untuk membayar caj zon bebas tersebut kepada defendan-defendan; dan

(d) sama ada Akta Zon Bebas 1990 dan Peraturan Zon Bebas 1991 memberi kuasa kepada defendan-defendan untuk mengutip caj zon bebas.

[13] At the commencement of hearing both counsel for the plaintiffs and the defendants agreed to confine the issue for determination by the court as follows:

> Whether the first defendant is entitled to impose the FCZ charges retrospectively ie before 20 April 2007, the date the amendment to the Free Zone Regulations 1991 vide PU(A) 166/2007 came into force.

[14] Counsel for the plaintiffs submits that prior to the coming into force of reg 8A on 27 April 2007, there was no provision either in the Act or in the 1991 Regulations that allowed the first defendant to impose free zone charges. There is also no provision that provides for the retrospective effect of reg 8A. Counsel submits that s 47 of the Act does not empower the Minister to make any subsidiary legislation effective retrospectively. Therefore it is submitted that the Minister has no power to direct free zone charges to be imposed. It is further submitted that the imposition of the FCZ charges affected the plaintiffs' substantive right to be allowed to operate in the free zone without charge.

[15] Counsel for the defendants submits that the true reason why the plaintiffs refused to pay the FZC charges is based on their stand that there is no provision in the law empowering the Minister to impose the said charges (see para 29 of the statement of claim). The plaintiffs are not challenging the FCZ charges imposed after the commencement of reg 8A. Counsel submits that it was never the stand of the first defendant that it is entitled to charge and collect FCZ charges prior to 27 April 2007 based on reg 8A. It is submitted that the imposition of these charges had been decided upon and directed by the Minister and the minister's direction on the imposition of the FCZ charges had been in place even before the commencement of reg 8A. This had even been acknowledged by the plaintiffs' association. The plaintiffs have made use of and accepted the service and had derived a benefit but now refused to pay on the ground that the direction/decision of the Minister on the imposition of the FCZ charges is ultra vires the Act and the Regulations. However the plaintiffs

did not pray for a declaration that no direction was made by the Minister as regards the imposition of the FCZ charges.

[16] Counsel submits that s 10(3) of the Act empowers the Minister to impose conditions for those activities that are referred to under s 10(1) which are activities specified in the First and Second Schedule. The activities carried out by the plaintiffs are within the activities in the First Schedule. Counsel submits that s 10(3) is wide enough to include any other activity to be carried out in the free zone subject to such conditions as the Minister may deem fit to impose and this would include conditions and directions given by the Minister to the first defendant as the authority regarding the basis and manner of calculating FCZ charges. These charges encompass services for processing FCZ forms, licenses, staff passes and provision of overall security of the free zone. The Act allows the Minister to give directions for the proper running of the KLIA FCZ and to protect revenue.

[17] Section 10 of the Act provides as follows:

10 Activity

(1) With the approval of the Minister —

(a) there may be carried out in a free commercial zone the activities specified in the First Schedule;

(b) there may be carried out in a free industrial zone the manufacturing activities specified in the Second Schedule.

(2) The Minister may, from time to time, by notification in the Gazette add to, alter or amend the First and the Second Schedules.

(3) Notwithstanding anything to the contrary in the any written law, the Minister may allow any activity to be carried out in a free zone subject to such conditions as he may deem fit to impose.

DECISION

[18] Section 10(3) empowers the Minister to impose such conditions he may deem fit in respect of any activity that the Minister may allow to be carried out in the free zone. The words 'any activity' would necessary refer to other activities not specifically mentioned in the First and Second Schedule. It is not disputed that the plaintiffs' activities fall within the First Schedule. To my mind if s 10(3) allows the Minister to impose such conditions that he deems fit on activities carried out other than those mentioned in the First and Second Schedule, by necessary implication the Minister has the power to impose conditions he deems necessary in respect of activities mentioned in those Schedules. Such conditions must necessarily relate to the activities carried out.

Counsel for the defendants submits that this would include imposition of FCZ charges, issuance of passes, licences and provision of overall security of the free zone.

[19] In respect of the FCZ forms, the plaintiffs' witness PW1 testified that the first and second free zones are for international shipments in and out and the third free zone is for transshipments within Malaysia. FCZ form 'FCZ1' is used for import of goods, 'FCZ2' for export and 'FCZ3' for transshipment. According to PW1 the said forms are required by the government to monitor movement of goods within the KLIA FCZ and also to record the volume of activity within the KLIA. FZ forms are submitted via online from the plaintiffs' office to the first defendant's office in KLIA FCZ. Thus based on the evidence of PW1, it is clear that FZ forms are related to the activities carried out by the plaintiffs.

[20] The Act imposes an obligation on the first defendant as the authority appointed by the Minister to administer, maintain and operate the KLIA free zone area (see s 2 of the Act). According to the defendants' witness DW1 the FCZ charges generate revenue for the first defendant to enable the first defendant to carry out its obligations as the authority of the KLIA FCZ. Section 13(2) imposes a mandatory obligation on the first defendant as the authority to comply with directions given by the minister. Section 13 provides as follows:

> 13 Authority to provide facilities
>
> (1) The Minister may require the Authority to provide and maintain or allow in a free zone such facilities as he may consider necessary for the proper and efficient functioning of such zone.
>
> (2) The Minister may give to the Authority such directions as he may consider necessary for the proper functioning of a free zone or for the purpose of protecting revenue; and the Authority shall comply with such directions.
>
> (3) The Authority shall provide adequate facilities for officers of customs whose duties may require their presence within or at the perimeter of a free zone; and the Authority shall permit customs offices to be established in a free zone —
>
> (a) to enable the Director-General to make such arrangements as he deems necessary to ensure the proper supervision of goods taken out from the free zone; and
>
> (b) for such purpose as may be considered necessary by the Minister for the better administration of the provisions of this Act.
>
> (4) The Authority shall provide adequate enclosures to segregate a free zone from the principal customs area for the protection of revenue together with suitable provisions for the movement of persons, conveyances, vessels and goods entering or leaving a free zone.

[21] It is not disputed that the Minister has appointed the first defendant as the authority. I find there is sufficient evidence to show that the first defendant as the authority has provided services to the plaintiffs. Amongst others the first defendant had put in place facilities to enable the plaintiffs to submit the FCZ forms online thus dispensing with the necessity of having to go to the first defendant's office to submit the forms. There is evidence that the first defendant employs security personnel for the purpose of ensuring overall security of the FCZ. The first defendant has also implemented the requirement of passes for those who wish to have access to the FCZ. The plaintiffs do not deny that they have accepted and continue to use the facilities in the KLIA FCZ area. The plaintiffs have therefore received benefits from the first defendant. I am unable to agree with the plaintiffs' counsel that the plaintiffs have a substantive right to operate in the free zone area without charge. The plaintiffs' witness agreed that the first defendant had never represented that these services were provided gratuitously. Further the Act is a specific legislation enacted to provide for and regulate free zone areas. Thus any right of the plaintiffs to operate in the free zone area must be subject to the Act.

[22] Based on the provisions in the Act, I find that the Minister is allowed to impose such conditions he may deem fit in relation to the plaintiffs' activities in the KLIA free commercial zone which includes the imposition of FCZ charges. Therefore the Minister has power to impose FCZ charges even prior to 27 April 2007. The Minister has decided that FCZ charges be imposed at the rate of RM5 per declaration. The first defendant's revenue derived from the FCZ charges enables the first defendant to carry out its obligations under the Act. Based on the evidence adduced during the hearing I find that the rate imposed is reasonable.

[23] The first defendant as the authority is obliged under the Act to comply with the directions given by the Minister in relation to the FCZ charges. In respect of the issue posed for determination, I agree with counsel for the defendants that the said charges imposed prior to 27 April 2007 are not illegal as contended by the plaintiffs and pursuant to the minister's directions, the first defendant is entitled to impose and to collect such FCZ charges from the plaintiffs. Hence the sums remaining outstanding are due and payable by the plaintiffs to the first defendant.

[24] On the contention by the plaintiffs' counsel that the Minister had delegated power to Datuk Aziyah Bahauddin, I find that the letter speaks for itself. There was no delegation of power by the minister. The decision was made by the Minister (see exh D22 at p 65 para 3).

[25] Counsel for the plaintiffs sought to raise the issue of limitation. I note that limitation is not one of the issues in the statement of agreed issues to be

tried (encl 81). At the commencement of hearing both parties had agreed to confine the issue for determination to whether the first defendant is empowered to impose FCZ charges before the commencement of reg 8A. Therefore the plaintiffs are deemed to have abandoned the issue of limitation and cannot raise it again in submissions. For this reason I decline to make any determination on limitation. In view of my findings above there is no necessity to consider the issue of quantum meruit.

CONCLUSION

[26] For the reasons stated above, the plaintiffs' claim is dismissed with costs to the defendants to be taxed unless otherwise agreed. The first defendant's counterclaim against the first, third and fifth plaintiffs is allowed as prayed with costs to be taxed unless otherwise agreed.

Claim dismissed with costs to be taxed unless agreed and first defendant's counterclaim allowed with costs to be taxed.

Reported by Kohila Nesan